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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

A.K. ANDERSON, Plaintiff and Appellant, v. GEORGE VALVERDE, as Director, etc., Defendant and Respondent.	E059981 (Super.Ct.No. CIVDS1211288) O P I N I O N

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge. Affirmed.

A.K. Anderson, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Alicia M.B. Fowler, Assistant Attorney General, and Kenneth C. Jones and Kevin K. Hosn, Deputy Attorneys General, for Defendant and Respondent.

Plaintiff and appellant A.K. Anderson (Anderson) appeals from the trial court's order denying his petition for writ of administrative mandate and upholding the Department of Motor Vehicle (DMV) suspension of his driving privilege. We affirm.

STATEMENT OF FACTS AND PROCEDURE

A. *The Accident and DMV/Administrative Actions – July 2006 to October 2012*

As best we can determine from the record, on or about July 13, 2006, Anderson was involved in an automobile accident. On July 13, 2006, the DMV mailed to Anderson a notice of reexamination asking him to have his doctor fill out some medical forms. The deadline was August 6, 2006, to avoid having his license suspended as of August 7, 2006.

On January 14, 2008, the DMV issued on order of suspension informing Anderson that his driving privilege was suspended as of January 18, 2008. The DMV issued the suspension under Vehicle Code section 13801 because Anderson did not complete the reexamination process.

The DMV held administrative hearings on January 14, September 16, and September 17, 2012. A notice of findings and decision, dated September 18, 2012, withdrew Anderson's privilege to operate a motor vehicle effective September 15, 2012. Further, a hearing report, also dated September 18, 2012, made the following findings of fact: Anderson's ability "to operate a motor vehicle safely is affected because of a disorder characterized by lapses of consciousness or control . . . . [Anderson] discontinued taking anti-seizure medications . . . . His neurologist feels [Anderson] is at risk for another seizure and has advised against driving. Per medical evidence and

opinion, [Anderson] poses an immediate threat to traffic safety and should not be driving for his safety and that of others on the roadway. Cause exists to end the suspension pursuant to Section 13801 [of the Vehicle Code] and suspend the driving privilege pursuant to Section 13953 [of the Vehicle Code]." The hearing report described that Anderson "rambled on" at the hearing regarding doctors and a woman claiming that Anderson had a seizure in his sleep. More important for the purposes of this appeal, Anderson "presented no affirmative evidence or testimony to rebut the department's evidence in this hearing."

The DMV conducted a department review and mailed Anderson a notice of decision on October 3, 2012, in which it affirmed its order of suspension.

B. Writ of Administrative Mandate Proceedings – October 2012 to October 2013

On October 29, 2012, Anderson, acting in propria persona, filed in the superior court a petition for writ of administrative mandate under Code of Civil Procedure section 1094.5. Anderson failed to lodge the administrative record.

On May 13, 2013, the court declined Anderson's request to waive fees for the administrative record, stating it was without jurisdiction to order the DMV to prepare the record without cost.

On June 24, 2013, the DMV "states that the administrative record has been prepared and they are willing to honor [Anderson's] fee waiver & lodge it with the court without deposit or further payment." The court vacated the order to show cause hearing regarding sanctions for failure to lodge administrative record.

On June 27, 2013, the DMV filed notice that it had lodged the administrative record.

On July 1, 2013, the DMV filed notice that it had lodged the administrative record and the hearing transcript.

On July 15, 2013, Anderson filed in the superior court a petitioner's statement of intention in which he requested the restoration of his driving privilege and $25,000 with interest. Anderson also requested to "[o]btain[] the accountability of my life with property, monetary, and liability reimbursement" and to "proceed with discovery in this case and other cases." Anderson further stated that he did not have a seizure on July 13, 2006, as "one or more doctors have claimed," but rather was assaulted on the job.

On July 26, 2013, the DMV filed its opposition to the writ petition. The DMV argued Anderson had not carried his burden to show that the challenged DMV decision was incorrect.

The hearing on the writ petition was held on August 16, 2013. The court referred to the neurologist's report of September 5, 2012, stating that Anderson had suffered seizures within the previous three years and that he refused to take anti-seizure medications, which put him at risk of having another seizure. The court also referred to Anderson's admission to the hearing officer that he was not taking his medication, and to his claim, unsupported by any evidence, that his doctors had misdiagnosed him. The court stated that "the overwhelming weight of the evidence" supported the DMV decision. After hearing from Anderson, the court denied the petition.

On October 28, 2013, the trial court entered judgment on its denial of the writ petition.

This appeal followed.

DISCUSSION

Anderson makes two main arguments on appeal. First, Anderson asserts he did not receive a copy of the full administrative record, despite qualifying for a fee waiver, and so the case should be remanded to the trial court. However, the record shows that the DMV lodged the administrative record with the court on June 27, 2013, without cost to Anderson, even though the court had notified Anderson he did not qualify for a fee waiver for this purpose.

Second, Anderson argues substantial evidence does not support the denial of his writ petition because the doctor's opinion is not based on a full medical examination, the medical reports are "hearsay and double hearsay," and Anderson in fact never suffered a seizure. Anderson asks for either a reversal or a remand requiring that he "go through a full medical examination [which] would show he is not suffering from any seizure disorder."

In ruling on Anderson's petition for writ of administrative mandate, the trial court was required to determine, by exercising its independent judgment, whether the hearing officer's decision was supported by the weight of the evidence. (Code Civ. Proc., § 1094.5, subd. (c); *Lake v. Reed* (1997) 16 Cal.4th 448, 456; *McKinney v. Department of Motor Vehicles* (1992) 5 Cal.App.4th 519, 523; *Coombs v. Pierce* (1991) 1 Cal.App.4th

568, 575-576.) "When the trial court is authorized to exercise independent judgment on the evidence, on appeal [we] need only review the record to determine whether substantial evidence supports the trial court's findings. [Citations.]" (*Coombs v. Pierce*, *supra*, at p. 576; *Lake v. Reed*, *supra*, at p. 457.) As the DMV argued to the trial court, the DMV is not required to show it was right. As the petitioner, Anderson had the burden to supply a sufficient record to show the DMV was wrong. (*Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354.)

The evidence supporting the trial court's finding is as follows: On September 5, 2012, defendant's physician examined Anderson and completed a driver medical evaluation. The physician advised that Anderson should not drive because of his "history of seizures and refusing to take medications." The physician further stated that Anderson "has been seen in the clinic since 12/2009 for seizure disorder sp meningioma resection. [Anderson] says he has been seizure free for many months and refuses to take seizure medication against the medical advice to take it. [Anderson] is at risk for seizures." The physician noted Anderson had one seizure in 2009, eight seizures in 2010, one seizure in 2011, and an unknown number of seizures in 2012. The physician indicated Anderson's condition affected safe driving because he refused medication.

Against this very clear evidence provided by Anderson's treating physician, Anderson offered both the DMV and the trial court *unsupported* assertions that his doctors had misdiagnosed him, that he had never had a seizure, and that the 2006 car accident was caused by being attacked from behind. As the trial court stated at the writ

petition hearing, Anderson did not provide any evidence at all that the DMV's decision was wrong. Similarly, Anderson has not demonstrated in this appeal that the trial court committed error. It was up to Anderson to arrange for another complete medical examination and report prior to the DMV hearing to counteract the report from his treating physician. He did not do this. In addition, Anderson's claim of "hearsay and double hearsay" regarding the medical report was not brought in the trial court, and so he has forfeited the ability to bring it on appeal. (*People v. Baker* (2012) 204 Cal.App.4th 1234, 1247-1248 [Fourth Dist., Div. Two].) For all of these reasons, we affirm the trial court's ruling.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

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CUNNISON
J.*

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.

* Retired judge of the Riverside Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.